Supreme Court, U.S.
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No. 00-960

IN THE

Supreme Court of the United States

EDWIN F. VIRGIN, SR., *et al.*,

Petitioners,

v.

COUNTY OF SAN LUIS OBISPO, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION SIX

BRIEF IN OPPOSITION

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QUESTION PRESENTED

In a state court case involving the California Subdivision Map Act and the California Williamson Act, following a final federal court judgment which determined that there are no federal statutory or common law issues, can Petitioners state a cognizable claim pursuant to the Fifth and Fourteenth Amendments to the United States Constitution for equal protection and substantive due process violations, based upon the California standard for appellate review of factual determinations by a trial court?

LIST OF PARTIES

Petitioners

Edwin F. Virgin, Sr., Susan F. Virgin, husband and wife, and Edwin F. Virgin, Jr.

Respondents

County of San Luis Obispo, a political subdivision of the State of California, Board of Supervisors of the County of San Luis Obispo, Subdivision Review Board of County of San Luis Obispo.

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OPINIONS BELOW

This Petition for Writ of Certiorari arises from a denial of a Petition for Review by the Supreme Court of California of a decision by the Court of Appeal of the State of California, Second Appellate District, Division Six, involving the subject matter of Petitioner's claim.

Petitioners, as adjoining property owners, jointly applied to the County of San Luis Obispo for a lot line adjustment pursuant to state and local procedures. The adjustment sought to divide Petitioners' land into eight separate parcels. Petitioners claimed that their property consisted of thirteen or fourteen legal parcels originally created by virtue of federal patents granted in the 1800's. The County denied Petitioners' application because the property involved is comprised of only two legal parcels. The State Court of Appeal affirmed the trial court's and the County's decision. The California Supreme Court subsequently denied review of the matter.

The United States Court of Appeals for the Ninth Circuit also previously considered Petitioners' claims in *Virgin, et al. v. County of San Luis Obispo, et al.*, 201 F.3d 1141 (9th Cir. 2000)[1], in which the Court of Appeals affirmed the District Court's dismissal of the case because of lack of subject matter jurisdiction. Through this Petition for Writ of Certiorari, Petitioners essentially attempt to continue to relitigate the precise issue already determined by the Ninth Circuit Court of Appeals: whether the mere fact that real property which traces its title to a federal land patent granted in the 1880's is exempt from state and local laws pertaining

1. Appendix, *infra*.

to the ownership, subdivision and use of real property. The Ninth Circuit concluded as follows:

> There is no analogous federal statute here that preempts either the county ordinance or state regulations. Furthermore, all the Supreme Court and Ninth Circuit cases on point hold that acts of Congress granting federal land patents are not bases for federal question jurisdiction. Nor is there any Supremacy Clause decision based solely on a federal land patent.
>
> Since the *Oneida, Packer v. Bird* and Supremacy Clause arguments are totally unpersuasive, we will not address the appellants' substantive claims. As the Ninth Circuit said in the federal land patent case most on point, 'whatever the extent of [the Virgins'] possessory rights to that property, [they] must vindicate those rights in the state courts.' *Landi*, 740 F.2d at 713-14.[2]

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2. *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 676-77 (1974), 94 S. Ct. 772, 39 L. Ed. 2d 73, ("once patent issues, the incidents of ownership are, for the most part, matters of local property law to be vindicated in local courts, and in such situations it is normally insufficient for 'arising under' jurisdiction merely to allege that ownership or possession is claimed under a United States patent."); *Packer v. Bird*, 137 U.S. 661 (1891), 11 S. Ct. 210, 34 L. Ed. 819 (water rights case involving shoreline disputes); and *Landi v. Phelps*, 740 S.2d 710, 713-714 (9th Cir. 1984) (holding that "the United States has no continuing interest in the property" acquired through federal land patents).

INTRODUCTION

In 1977, Petitioners acquired two parcels of land in San Luis Obispo County, California, consisting of approximately 1230 acres of undeveloped agricultural land. The parcels were once part of a larger ranch granted to Petitioners' predecessors-in-interest, which was originally the result of a number of federal land patents from the 1880's. The ranch remained as a single undeveloped agricultural holding until the 1970's.

The property acquired by Petitioners in 1977 was subject to a Final Parcel Map and Certificates of Compliance, previously approved, filed, and recorded pursuant to the California Subdivision Map Act[3], which reflected the property for all official purposes as two separate legal parcels. In addition, the property was subject to Williamson Act contracts pursuant to the California Land Conservation Act of 1965[4] under which Petitioners agreed to preserve the land intact for agricultural use in exchange for a reduction in property taxes.

The contracts specifically provided, in part:

> Any act by Owner which results in creation of a parcel or parcels of land, within the above-described premises, smaller than the minimum lot size prescribed by the zoning then on said

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3. Subdivision Map Act, Government Code § 66410, *et seq.* (formerly California Business and Professions Code § 11525, *et seq.*).

4. Government Code § 51200, *et seq.*

> premises shall constitute a violation of this contract . . .

The zoning applicable to the subject property at the time the Williamson Act contracts were signed, and throughout their existence, provides for a 640 acre minimum parcel size.

In 1993, Petitioners jointly applied to the County of San Luis Obispo for a lot line adjustment seeking to create eight parcels. The smallest parcel was intended to be 100 acres and the largest parcel was intended to be 353 acres, all of which were substantially smaller than the minimum parcel size required for the creation of new parcels by the County's zoning ordinances. The County's Subdivision Review Board denied the lot line adjustment application because Petitioners did not own eight parcels to adjust and because the creation of new parcels would violate the California Subdivision Map Act, the Williamson Act contracts, and current zoning. Petitioners appealed the decision to the County Board of Supervisors, which denied the appeal for the same reasons. The Board of Supervisors found that because there are only two parcels under California law, the land cannot legally be divided into eight parcels by a lot line adjustment. Moreover, any such adjustment would violate the Williamson Act contracts and current zoning.

Petitioners filed a petition for writ of mandate and complaint for damages in the San Luis Obispo County Superior Court challenging the decision of the Board of Supervisors. The petition alleged that the County abused its discretion and acted in an arbitrary and capricious manner in denying the lot line adjustment application. Petitioners specifically alleged that the County erred in finding that the subject property consisted of only two legal parcels instead

of fourteen, and in finding that the adjustment would violate the Williamson Act contracts and County ordinances. Petitioners further sought damages for violation of their civil rights under color of law pursuant to 42 U.S.C. § 1983. Petitioners amended their complaint to add other causes of action for damages, including inverse condemnation and slander of title.

After a trial on the merits of the writ of mandate cause of action, the trial court concluded that Petitioners' property consisted of four legal parcels and remanded the matter to the Board of Supervisors for reconsideration of Petitioners' application in light of its conclusions. The Board of Supervisors subsequently approved Petitioners' amended application for four parcels and the trial court accepted the County's writ return, finding that the County had complied with the writ of mandate. In a subsequent proceeding, the trial court granted the County's motion for summary judgment on Petitioners' causes of action for damages. Petitioners appealed the decisions to the State Court of Appeal and the County cross-appealed on the issue of whether Petitioners' property consisted of four, rather than two, legal parcels.

The State Court of Appeal concluded that the County was correct in its position that Petitioners' property consists of only two legal parcels. Moreover, the Court of Appeal concluded that because Petitioners' causes of action for damages were premised on a theory that they had a right to a lot line adjustment showing eight parcels, the trial court's grant of the summary judgment in favor of the County was necessarily correct. Consequently, the Court of Appeal reversed the writ of mandate and entered judgment in favor

of the County. Petitioners' request for review by the Supreme Court was subsequently summarily denied.

Concurrently with their prosecution of the state court actions, Petitioners also sought to litigate their dispute with the County in the United States District Court for the Central District of California. The District Court dismissed Petitioners' action with prejudice for lack of subject matter jurisdiction. Petitioners appealed that decision to the Ninth Circuit Court of Appeals, which affirmed the District Court's dismissal because of lack of subject matter jurisdiction. *Virgin, et al. v. County of San Luis Obispo, et al.*, 201 F.3d 1141, *supra*. Although the Ninth Circuit conclusively rejected Petitioners' claims for federal relief, Petitioners nevertheless characterize the Ninth Circuit's reported decision as an invitation for review by the United States Supreme Court pursuant to this Petition for a Certiorari.

Petitioners apparently now argue that the decisions of the California state courts were based upon evidentiary rules included in a "draconian" standard of review which itself somehow violates the Fifth and Fourteenth Amendments to the Constitution of the United States. For the reasons argued herein, Petitioners cannot state a cognizable basis for a writ of certiorari by the United States Supreme Court.

REASONS FOR DENYING THE WRIT

There are no compelling reasons justifying the granting of a writ of certiorari. Respondents recognize that the considerations governing review of petitions for writ of certiorari pursuant to the Rules of the Supreme Court are not necessarily controlling, nor do they fully measure the Supreme Court's discretion. Nevertheless, the rules indicate

the reasons the Court considers in petitions for writ of certiorari, none of which are present in this case.

I. Petitioners Mischaracterize The Standard Of Review Utilized By The State Court Of Appeal

In an effort to "side step" the ultimate fact that this case raises no justiciable federal issues, Petitioners assert that the State Court of Appeal dismissed all of their state law and federal law claims based upon evidentiary rules included within a standard of review applied preferentially to the conduct of the County Respondents, thereby violating their Fifth and Fourteenth Amendment rights, privileges, and immunities. In Petitioners' words:

> Applying this particularly draconian version of the substantial evidence test to the County's conduct, the state appellate court in effect ruled that when a property owner raises federal constitutional challenges against the local government, such challenges will be resolved by looking only to the evidence which supports the local government's actions, discarding evidence unfavorable to the action of the local government as lacking sufficient verity to be accepted by the trier of fact, accepting all evidentiary inferences drawn by the local government in making its own decision, while being completely free not to consider even uncontradicted evidence supporting the claim.[5]

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5. Petition for Writ of Certiorari, pp. 3-4.

Petitioners mischaracterize the standard of review followed by the State Court of Appeal required by California Code of Civil Procedure §§ 1094.5(b) and (c), which defines the judicial review of administrative decisions pursuant to administrative mandamus. The State Court of Appeal expressly recognized the statutory standard.[6] Civil Procedure §§ 1094.5(b) and (c) provide as follows:

> (b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.
>
> (c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

On the basis of the State Court of Appeal's citation of the evidentiary standard enunciated in *Rodney F. v. Karen M.*, 61 Cal. App. 4th 233, 241 (1998), Petitioners somehow

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6. Petition for Writ of Certiorari, Appendix B, p. 8a.

reason that the Court of Appeal ultimately adopted a standard which obligates it to only consider evidence supporting the governmental action.[7] However, the State Court of Appeal's decision expressly references the standard of review indicated by Code of Civil Procedure §§ 1094.5(b) and (c). The State Court of Appeal did what appellate courts do in all cases: it deferred to the trial court's determinations on factual questions. The citation to *Rodney F. v. Karen M.* simply supports this fundamental principle of jurisprudence. Moreover, *Rodney F. v. Karen M.*, did not involve any governmental action whatsoever, but rather, was a paternity suit between private parties.

Petitioners' argument reflects a fundamental misunderstanding of the basic role of appellate courts in general. It is well settled under California law, and elsewhere, that the function of an appellate court is to review errors of law and not pass on questions of fact. (*Tupman v. Haberkern*, 208 Cal. 256 (1929); 9 Witkin Cal. Proc. 4th Ed. "Appeal" § 316 p. 354, *et seq.*) The distinction between fact and law in California cases was discussed in *Board of Education v. Jack M.*, 19 Cal. 3d 691, 698 (1977) as follows:

> In theory, the determination is one of ultimate fact if it can be reached by logical reasoning from the evidence, but one of law if it can be reached only by the application of legal principles.

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7. The very question for review presented by Petitioners describes "a standard of review that 'expressly requires' that the state court (a) 'look only to the evidence supporting' the governmental action, (b) discard 'evidence unfavorable' to the government, (c) accept only those inferences from the evidence as drawn by the government, and (d) disregard 'even uncontradicted evidence'?" Petition for Writ of Certiorari, p. i.

In this case, Petitioners cannot establish that the State Court of Appeal failed to consider the substantial evidence in the record before it. Furthermore, Petitioners have not prevailed in any court on legal issues germane to their claims. Consequently, Petitioners have not established any basis for review by this Court on a theory that their Fifth and Fourteenth Amendment rights have been violated on the basis of an evidentiary standard of review, or otherwise.

II. This Case Does Not Present Any Conflict Between Decisions Of The United States Courts of Appeals Or Any State Courts Of Last Resort

As previously discussed, the claims raised by Petitioners were addressed by the Ninth Circuit Court of Appeals in *Virgin, et al. v. County of San Luis Obispo, et al.*, 201 F.3d 1141, *supra*. Petitioners cannot establish that the decision of the Ninth Circuit was in conflict with the decision of any other United States Court of Appeals. Moreover, Petitioners cannot establish that the decision of the California Court of Appeal conflicted with any other decision by a state court of last resort. The decision was unpublished and, therefore, is not by definition any appellate authority whatsoever. A writ of certiorari should be granted only in cases necessitating the resolution of principles of importance to the public, as distinguished from parties, and in cases in which there are real conflicts of opinion and authority between courts of appeals. (*N.L.R.B. v. Pittsburgh S.S. Co.*, 340 U.S. 498, 71 S. Ct. 453, 95 L. Ed. 479 (1951).)

III. This Case Does Not Present Any Federal Question

As discussed by the Ninth Circuit in *Virgin, et al. v. County of San Luis Obispo, et al.* 201 F.3d 1141, *supra*, federal land patents do not provide a basis for federal question jurisdiction. The Supreme Court in *Shulthis v. McDougal*, 225 U.S. 561, 569-70 (1912), 32 S. Ct. 704, 56 L. Ed. 1205, stated as follows:

> [a] suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends. This is especially so of a suit involving rights to land acquired under a law of the United States. If it were not, every suit to establish title to land in the central and western states would so arise, as all titles in those states are traceable back to those laws.

The rule established by *Shulthis v. McDougal* has been repeatedly reaffirmed by the Supreme Court, the Ninth Circuit, and other lower courts. (*See, e.g., Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 676-77 (1974), 94 S. Ct. 772, 39 L. Ed. 2d 73; *Barnett v. Kunkel*, 264 U.S. 16, 20 (1924), 44 S. Ct. 254, 68 L. Ed. 539; *Landi v. Phelps*, 740 F.2d 710, 713-714 (9th Cir. 1984); *Standage Ventures, Inc. v. Arizona*, 499 F.2d 248, 249 (9th Cir. 1974) and *Hilgeford v. Peoples Bank*, 776 F.2d 176, 178 (7th Cir. 1985) per curiam.)

IV. The California Court Of Appeal Has Not Decided Any Important Question Of Federal Law That Has Not Been, But Should Be, Settled By The Supreme Court, Nor Has The Court Of Appeal Decided An Important Federal Question In A Way That Conflicts With Relevant Decisions Of The Supreme Court

Petitioners cannot establish that the California Court of Appeal decided an important question of federal law that needs to be settled by the Supreme Court, or conflicts with any relevant decision of the Supreme Court. As previously noted, the decision by the California Court of Appeal is unpublished and, therefore, is not even a precedent that could ever pose a conflict with relevant decisions of the Supreme Court.

In final analysis, the sole basis for Petitioners' claim in this Petition for Certiorari is an argument that somehow the State Court of Appeal followed a standard of review, which Petitioners not only mischaracterize, but which involved matters which do not raise federal questions. Moreover, even if a federal question were somehow found to exist based upon Petitioners' dubious procedural due process argument, the Supreme Court has held that it is not sufficient that a federal question, abstractly considered, might present intellectually interesting and solid problems, since the Court does not sit to satisfy scholarly interests in such issues, nor for the benefit of particular litigants. (*Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955).)

CONCLUSION

Petitioners have failed to prevail on any federal issue, so they now want the Supreme Court to second-guess the lower courts based upon a mischaracterized evidentiary theory. Petitioners are essentially asking this Court to review a voluminous evidentiary record involving matters of purely state law on the pretense that this case somehow raises federal claims pursuant to the Fifth and Fourteenth Amendments to the Constitution of the United States. The Supreme Court has long recognized that it should not grant a writ of certiorari merely to review evidence or inferences. (*General Talking Pictures Corp. v. Western Electric Co.*, 304 U.S. 175, 58 S. Ct. 849, 82 L. Ed. 1273, *adhered to*, 305 U.S. 124, 59 S. Ct. 116, 83 L. Ed. 81, *reh. den.*, 305 U.S. 675, 59 S. Ct. 355, 83 L. Ed. 437 (1938).)

Respondents respectfully request that the Supreme Court deny the Petition for Writ of Certiorari for the reasons discussed above.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED JANUARY 13, 2000

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 98-55557

D.C. No.
CV-97-08599-ABC

EDWIN F. VIRGIN, SR.; SUSAN S. VIRGIN; EDWIN F. VIRGIN, JR.,

Plaintiffs-Appellants,

v.

COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California; SUPERIOR & MUNICIPAL COURTS OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN LUIS OBISPO; BOARD OF SUPERVISORS OF THE COUNTY OF SAN LUIS OBISPO,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

Argued and Submitted
Oct. 6, 1999—Pasadena, California

Filed Jan. 13, 2000

Appendix

Before: Betty B. Fletcher, Dorothy W. Nelson, and Melvin Brunetti, Circuit Judges.

Per Curiam Opinion

* * *

OPINION

PER CURIAM:

We affirm the district court's dismissal because of a lack of subject matter jurisdiction.

Factual and Procedural Background

Edwin F. Virgin, Sr., Susan S. Virgin, and Edwin F. Virgin, Jr. own land in the County of San Luis Obispo because of federal land patents granted to their predecessors-in-interest. The Virgins appeal the district court's dismissal for lack of subject matter jurisdiction over their declaratory relief action against the county and others alleging that the county's Subdivision Review Board improperly denied their application for a parcel lot line adjustment intended to create thirteen separate legal parcels out of the Virgins' acreage. The Virgins argue that the district court erred because: (1) the general rule that a federal land patent does not confer federal question jurisdiction does not apply; (2) several Supreme Court precedents and/or the acts of Congress creating their federal patents provide exceptions to the general rule; and (3) the Supremacy Clause creates federal question jurisdiction.

Appendix

The appellants claim ownership of about 1,240 acres in San Luis Obispo County. They allegedly own seven legal parcels created by patents issued to the Virgins' predecessors-in-interest by the United States government pursuant to acts of Congress in 1820 and 1862. In addition, they claim to own six parcels acquired pursuant to other acts of Congress in 1820, 1829, 1853, and 1862. The appellants recorded these parcels in the records of the County Recorder.

In 1993, the Virgins filed an application with the county for a lot line adjustment pursuant to County Ordinance and California Government Code Section 66412(d) that reconfigured the thirteen lots into eight lots. On April 3, 1995, the county's Subdivision Review Board denied their application for a lot line adjustment and found that their property included only one parcel. The Virgins appealed the denial of the lot line application to the county's Board of Supervisors. After hearings on August 8, 1995, and October 17, 1995, the Board denied the appeal on February 6, 1996 and found that the Virgins' property included only two parcels. The Virgins then filed a petition for writ of mandamus or a writ of mandate, and a complaint for declaratory relief, an injunction, and damages in the Superior and Municipal Courts of the State of California for San Luis Obispo County. They named as defendants the county, the Subdivision Review Board, and the Board of Supervisors. On May 6, 1997, the Superior Court ordered the county to conduct a hearing to reconsider the lot line adjustment but found that the Virgins' property consisted of only four parcels. The county Board of Supervisors held a hearing and confirmed that the Virgins owned only four parcels, "which do not include the majority of Plaintiffs' ownership of the land patents."

Appendix

On November 21, 1997, the Virgins filed a complaint for declaratory and injunctive relief in federal district court. They named as defendants San Luis Obispo County, its Board of Supervisors, and the Superior and Municipal Courts of the State of California for the County of San Luis Obispo. On December 16, 1997, the district court issued an order to show cause why the action should not be dismissed for lack of subject matter jurisdiction. On February 12, 1998, after briefing by both parties and a hearing, the district court dismissed the case with prejudice for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). The Virgins timely appealed.

Standard of Review

The Ninth Circuit reviews dismissals for lack of subject matter jurisdiction de novo. *See Crist v. Leippe*, 138 F.3d 801, 803 (9th Cir.1998).

Discussion

This case is an extremely straightforward application of Supreme Court and Ninth Circuit caselaw on federal question jurisdiction. Section 1331(a) gives the district courts original jurisdiction of every civil action that "arises under the Constitution, the law, or treaties of the United States." A claim arises under federal law within § 1331 if it is apparent from the face of the complaint either that (1) a federal law creates the plaintiff's cause of action; or (2) if a state law creates the cause of action, a federal law that creates a cause of action is a necessary element of the plaintiff's claim. *See Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 808-09 (1986).

Appendix

Federal land patents and acts of Congress do not provide bases for federal question jurisdiction. The Supreme Court has clearly stated that:

> [a] suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends. This is especially so of a suit involving rights to land acquired under a law of the United States. If it were not, every suit to establish title to land in the central and western states would so arise, as all titles in those states are traceable back to those laws.

Shulthis v. McDougal, 225 U.S. 561, 569-70 (1912). Furthermore, it is well established that "a controversy in respect of lands has never been regarded as presenting a Federal question merely because one of the parties to it has derived his title under an act of Congress." *Id.* at 570.

Shulthis's rule that federal land patents do not confer federal question jurisdiction has been repeatedly reaffirmed by the Supreme Court, the Ninth Circuit, and other lower courts. *See, e.g.*, *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 676-77 (1974) ("Once patent issues, the incidents of ownership are, for the most part, matters of local property law to be vindicated in local courts, and in such

situations it is normally insufficient for 'arising under' jurisdiction merely to allege that ownership or possession is claimed under a United States patent."); *Barnett v. Kunkel*, 264 U.S. 16, 20 (1924) (same); *Landi v. Phelps*, 740 F.2d 710, 713-714 (9th Cir.1984) (holding that "the United States has no continuing interest in the property" acquired through federal land patents); *Standage Ventures, Inc. v. Arizona*, 499 F.2d 248, 249 (9th Cir.1974) ("The complaint does not allege expressly that any law of the United States is directly or indirectly involved in the dispute; it is not alone enough that appellant's title is traceable to such a law."); *Hilgeford v. Peoples Bank*, 776 F.2d 176, 178 (7th Cir.1985) (per curiam) ("It is well settled . . . that a controversy regarding land has never been regarded as presenting a federal question simply because one of the parties to it has derived his title from a patent or under an act of Congress.").

Despite this overwhelming caselaw, the appellants contend that two Supreme Court precedents, the acts of Congress conferring the patents, and the Supremacy Clause represent exceptions to the general rule. These claims lack merit.

A. Supreme Court Precedents: Oneida *and* Packer v. Bird

1. Oneida

First, the appellants argue that the holding in *Oneida* signifies an exception to the general rule. The exception, however, is extremely narrow. In *Oneida*, the Supreme Court determined that federal question jurisdiction existed because

"it rests on the not insubstantial claim that federal law now protects, and has continuously protected from the time of the formation of the United States, possessory rights to tribal lands, wholly apart from the application of state law principles which normally and separately protect a valid right of possession." *Oneida*, 414 U.S. at 677. The Ninth Circuit has interpreted this exception narrowly, recognizing an exception only if "federal law had a continuing interest in protecting the Indians' possessory right to tribal lands." *Landi*, 740 F.2d at 713.

This case does not involve a continuing federal interest in the possessory rights of Indian tribes. Therefore, the narrow exception that the Supreme Court carved out in *Oneida* is inapplicable here. As then-Justice Rehnquist pointed out in his *Oneida* concurrence, "federal courts have traditionally been inhospitable forums for plaintiffs asserting federal-question jurisdiction of possessory land claims. . . . [T]he grant of a land patent . . . carries with it no guarantee of continuing federal interest and certainly carries with it no indefinitely redeemable passport into federal court." *Oneida*, 414 U.S. at 683 (Rehnquist, J., concurring) (quoted in *Landi*, 740 F.2d at 713).

2. Packer v. Bird

The appellants argue that their indefinitely redeemable passport into federal court is federal common law created by *Packer v. Bird*, 137 U.S. 661 (1891). They claim this federal common law comes from one paragraph of dicta:

> The courts of the United States will construe the grants of the general government without reference to the rules of construction adopted by the states for their grants; but whatever incidents or rights attach to the ownership of property conveyed by the government will be determined by the states, subject to the condition that their rules do not impair the efficacy of the grants or the use and enjoyment of the property by the grantee.

Packer, 137 U.S. at 669 (emphasis added). The appellants emphasize that the last clause and the phrase "use and enjoyment" represent applicable federal common law worthy of federal question jurisdiction.

Packer, however, is a water rights case. Specifically, it involves whether a landowner's property extends to the high or low water mark of a stream. *See Packer*, 137 U.S. at 669-70. Most citations to *Packer* involve shoreline disputes. Though federal common law can provide the basis for federal question jurisdiction, *see, e.g., National Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 850 (1985), neither the Supreme Court nor the Ninth Circuit has ever invoked *Packer* to create federal common law conferring federal question jurisdiction.

Furthermore, five years after *Packer*, the Supreme Court rejected the appellants' argument and held that property received through federal land patents is subject to state and local regulations. *See Eldridge v. Trezevant*, 160 U.S. 452, 468 (1896) ("The subject-matter of such rights and regulations falls within the control of the states. . . .").

Finally, *Shulthis* established that an arising-under case must substantially involve a dispute respecting the construction or effect of a federal law and that land acquired through an act of Congress does not confer federal question jurisdiction. *See Shulthis*, 225 U.S. at 569-70.

B. Acts of Congress

In addition to relying on *Oneida* and *Packer*, the appellants contend that the acts of Congress conferring their federal land patents provide federal question jurisdiction. This argument is contrary to the express language in *Shulthis* that says acts of Congress do not confer federal question jurisdiction. *See Shulthis*, 225 U.S. at 570. Again, there is no Supreme Court or Ninth Circuit holding to the contrary.

C. The Supremacy Clause

Finally, the appellants argue that the Supremacy Clause, *see* U.S. Const. art. VI, cl. 2, provides an independent basis for federal question jurisdiction. The Supremacy Clause cases cited by the appellants are inapposite because they involve federal statutes or treaties that directly preempt state statutes. *See Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983) (ERISA allegedly preempts New York Human Rights Law and Disability Benefits Law); *Fouke Co. v. Mandel*, 386 F.Supp. 1341 (D.Md.1974) (federal treaty and wildlife protection statute preempted Maryland criminal statutes prohibiting the importation of seal skins).

In this case, however, the appellants sought a lot line adjustment pursuant to County Ordinance and California

Government Code Section 66412(d). There is no analogous federal statute here that preempts either the county ordinance or state regulations. Furthermore, all the Supreme Court and Ninth Circuit cases on point hold that acts of Congress granting federal land patents are not bases for federal question jurisdiction. Nor is there any Supremacy Clause decision based solely on a federal land patent.

Since the *Oneida*, *Packer v. Bird*, and Supremacy Clause arguments are totally unpersuasive, we will not address the appellants' substantive claims. As the Ninth Circuit said in the federal land patent case most on point, "whatever the extent of [the Virgins'] possessory rights to that property, [they] must vindicate those rights in the state courts." *Landi*, 740 F.2d at 713-14.

The appropriate remedy for the appellants is to litigate their claims through the state court system and then file a petition for certiorari for the U.S. Supreme Court to review the state court decision with regard to these federal land patents. We affirm the district court's dismissal of this case for lack of subject matter jurisdiction.

AFFIRMED.